

07-Mar-2003 2003-0014433

has not been compared with
original

BUTTE COUNTY RECORDER

RECORDING REQUESTED BY:

Gerald and Linda Richter
c/o David E. Martinek
P.O. Box 1266
Eureka, California 95502

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Sacramento Office
8800 Cal Center Drive
Sacramento, California 95826
Attention: James Tjosvold, Chief
Northern California -- Central
Cleanup Operations Branch

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: 651 Liberator Street, Chico California, APN 047-570-011

This Covenant and Agreement ("Covenant") is made by and between Gerald and Linda Richter (the "Covenantor"), the current owner of property situated in Chico, County of Butte, State of California, described as Assessor Parcel Number 047-570-011 (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the potential presence of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260 in soil at the Property. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE ISTATEMENT OF FACTS

1.01. The Property is located in the area generally bounded by Boeing Avenue on the northwest and Sikorsky Avenue on the southeast, County of Butte, State of California. This

property is more specifically described as Butte County Assessor's Parcel No. 047-570-011.

1.02. The Property is a portion of a site being remediated pursuant to a Remedial Action Plan approved by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.8. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including trichloroethylene (TCE), perchloroethylene (PCE), carbon tetrachloride, chloroform, and 1,1,2-trichloroethane are present in the groundwater in and under portions of the Property and may be present in the soil at the Property, the Remedial Action Plan requires a deed restriction as part of the site remediation. The Department circulated the Remedial Action Plan, together with the final mitigated negative declaration, pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Remedial Action Plan and the final mitigated negative declaration were approved by the Department on January 11, 2002. Remediation includes installing and maintaining a groundwater extraction and treatment system and groundwater monitoring wells ("Monitoring Wells"). The operation and maintenance of the groundwater extraction and treatment system and the Monitoring Wells is pursuant to the Operation and Maintenance Agreement between the City of Chico and the Department.

1.03. Groundwater at the Property is found 85 to 100 feet below ground surface. Contaminants in the groundwater include trichloroethylene (TCE), perchloroethylene (PCE), carbon tetrachloride, chloroform, and 1,1,2-trichloroethane. Because TCE occurs in the highest concentrations in the groundwater and TCE is the most extensive volatile organic compound, remediation focuses on TCE as the target for remedial purposes. It is contemplated that the measures taken to remediate TCE will also directly remediate the other detected volatile organic compounds. As of 1998, TCE was present in the groundwater below the Property in excess of 50 ppm. California drinking water standards for TCE are 5 ppm. The Department concluded that the groundwater presents an unacceptable threat to human health and safety.

As detailed in the Final Remedial Action Plan, surface soil samples for volatile organic compounds, taken in previous investigations, were at nondetect levels, but soil gas contamination was detected at a depth of 5 feet below the surface and increased with depth down to 15 feet below the surface. Soil contamination is not present at the Property at significant concentrations in surface soil and therefore there is no risk to the public during normal activities at the Property provided that the restrictions of this Covenant are fully complied with. However,

some soil contamination may still remain at the Property in the deeper soils. The Department concludes that analysis for potential contamination must be conducted prior to any excavation below five feet.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil

Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyances of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect the proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil at 5 or more feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than 5 feet below the soil surface.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops); or
- (b) Drilling for water, oil, or gas without prior written approval by the Department.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor, Owner or Occupant modify or remove any improvements. ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas constructed or placed upon any portion of the Property in violation of the Restrictions.) Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI --
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or any other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant in the County of Butte within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Gerald and Linda Richter

c/o David E. Martinek
P.O. Box 1266
Eureka, California 95502

To Department: Department of Toxic Substances Control

Sacramento Office
8800 Cal Center Drive
Sacramento, California 95826
Attention: James Tjosvold, Chief
Northern California -- Central Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other terms set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

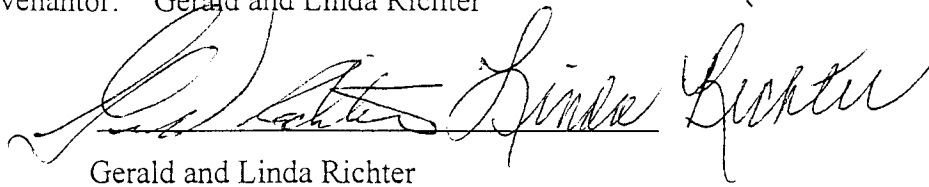
7.06. Statutory References. All statutory references include successor provisions.

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IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Gerald and Linda Richter


Gerald and Linda Richter

Date: Jan. 9, 2003

STATE OF CALIFORNIA)

COUNTY OF Butte)

On this 9th day of January, in the year 2003,

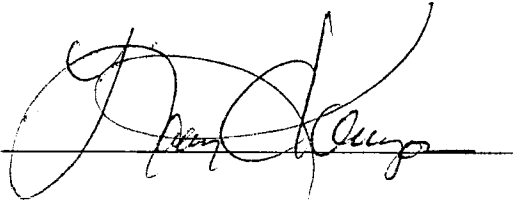
before me Lacey C Kenyon, personally appeared

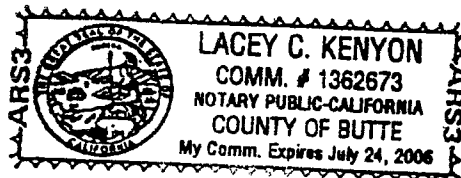
Gerald K. Richter and Linda Richter

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature





Department of Toxic Substances Control

By: James Tjosvold
James Tjosvold, Chief
Northern California -- Central Cleanup Operations Branch

Date: January 28, 2003

STATE OF CALIFORNIA)

COUNTY OF Sacramento)

On this 28th day of January, in the year 2003,

before me Betty J. Engle, personally appeared

James Tjosvold

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Betty J. Engle



BJE